

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB DEC. 14, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Americar Rental System, Inc.

v.

David A. Vickman

Opposition No. 106,979
to application Serial No. 75/152,708
filed on August 19, 1996

Bruce A. Tassan of Tassan Law Firm for Americar Rental
Systems, Inc.

John H. Wiegenstein of Heller Wiegenstein P.L.L.C.
for David A. Vickman.

Before Cissel, Wendel, and McLeod, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

David A. Vickman filed an application to register the
mark AMERICAB for "taxi transport services; and
transportation of passengers and freight by automobile,
limousine, bus and truck."¹

¹ Serial No. 75/152,708, filed August 19, 1996, based on an
allegation of a bona fide intention to use the mark in commerce.

Americar Rental System, Inc. filed an opposition to registration of the mark on the ground of likelihood of confusion under Section 2(d) of the Trademark Act. Opposer alleges use since 1963, either directly or through predecessors-in-interest, of the mark AMERICAR for valet airport parking services, automobile cleaning services, automobile rental and leasing services, limousine services and automobile dealership services; ownership of Registration Nos. 800,009 and 1,959,537 for the mark; and the likelihood of confusion if applicant were to use the mark AMERICAB for the services identified in the application.

Applicant in his answer denied the salient allegations of the notice of opposition.

The record consists of the file of the involved application; opposer's trial testimony deposition of Patrick M. Tucci, an officer of opposer; certified status and title copies of three registrations owned by opposer made of record by opposer's notice of reliance;² and opposer's

² Registration No. 800,009, issued December 7, 1965, for the mark AMERICAR for leasing and renting of vehicles. Section 8 & 15 affidavits accepted and acknowledged, respectively; first renewal December 7, 1985.

Registration No. 1,959,537, issued March 5, 1996, for the mark AMERICAR for valet airport parking services and automobile cleaning services in Class 37; for automobile rental and leasing services and limousine services in Class 39; and for automobile dealership services in Class 42.

Registration No. 2,017,332, issued November 19, 1996 for the mark AMERICAR RENTAL SYSTEM and design for automobile cleaning services in Class 37; automobile renting, leasing, limousine and

responses to applicant's interrogatories and production requests made of record by applicant's notice of reliance.³ Both parties have filed briefs, but an oral hearing was not requested.

The Record

Opposer uses its mark AMERICAR in connection with car rental and leasing services, airport valet parking, limousine and bus charter and courier services, car care and laundry services, and car sales. The services of opposer which are most similar to taxi transport services are the airport shuttling services provided as part of its valet parking and the shuttling of its car rental customers to and from hotels, homes, airports and the like. (Tucci deposition (TD) 7:8-12). Opposer's mark is used directly on its vehicles, by decal identification on the vehicles, signs on the rooftops, window signs, illuminated signs on the dashboard and the like, in order to permit identification by persons waiting for them. (TD 7:20-26-8:1-8). Opposer also

airport valet parking services in Class 39; and for automobile dealership services in Class 42. A disclaimer has been made of the phrase RENTAL SYSTEM.

We note that opposer only pleaded ownership of the first two registrations in the notice of opposition. Since applicant has raised no objection to opposer's reliance upon the third, we have taken all three under consideration in rendering our decision.

³ A notice of reliance is not the proper means for introducing documents produced during discovery. See Trademark Rule 2.120(3)(ii). Since opposer has failed to object to applicant's introduction of the documents in this manner, however, we have considered the same.

leases vehicles to companies such as limousine companies, taxicab companies or companies using 15-passenger vans, for use by these companies in providing transportation to the public. All of these vehicles are marked with the AMERICAR mark. (TD 8:9-22). Opposer advertises through the global distribution system operated by the airlines and by direct advertising to travel agencies, travel agency organizations, hotels, airlines, train operators, cruise ship lines, as well as by ads in in-flight magazines, travel agent publications and the USA Today newspaper. (TD 5:11-24). A summary of advertising and promotional expenses for the year 1996 shows expenses in the range of \$225,000. (Exhibit 1).

The Opposition

Priority is not an issue here, in view of the certified status and title copies of its registrations which opposer has made of record. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Thus, we turn to the issue of likelihood of confusion and to those of the du Pont factors which are relevant under the present circumstances.⁴

Considering first the similarity or dissimilarity of the marks AMERICAR and AMERICAB, we agree with applicant to the extent that the endings -CAR and -CAB of the two marks

are two distinct words with separate connotations. However, although a side-by-side comparison of the marks would make this difference apparent, this is not the proper test for determining the likelihood of confusion.⁵ This is particularly true in the present case, where consideration must be given to the fact that applicant's mark is intended to be used, as opposer's is being used, in connection with transportation services being offered to travelers in locations such as airports, hotels, or even busy city streets. As pointed out by opposer, the letters "R" and "B" could easily be mistaken for one another, particularly when viewed on a vehicle at a distance or in the rush of traffic. Opposer has established that its mark is used directly on its vehicles, in the same manner as the normal taxi cab. Thus, we find the high degree of similarity in appearance of the marks to be a very significant element here and to weigh in opposer's favor. See *In re Lamson Oil Co.*, 6 USPQ2d 1041 (TTAB 1987)[similarity in appearance of marks TURCOOL and TRUCOOL sufficient in itself to indicate likelihood of confusion]. Furthermore, even though the endings -CAR and

⁴ See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

⁵ See *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988)[test is not whether the marks are distinguishable upon side-by-side comparison, but rather whether they so resemble one another as to be likely to cause confusion].

-CAB have separate dictionary meanings, there is obviously a close relationship between a "car" and a "cab." The similarity in connotation, both being recognized terms for a means of transportation, results in similar overall commercial impressions for the marks, especially because it is general, rather than specific, impressions of marks which are retained by purchasers over a period of time. See *In re Mucky Duck Mustard Co., Inc.*, *supra*.

Furthermore, although applicant urges the Board to take judicial notice of the frequent use of the words "America" and "car" in the motor vehicle and transportation industries, this is not the type of adjudicative fact which falls within the scope of judicial notice. See FRE 201(b). Applicant made no evidence of record to support any argument that opposer's mark is weak or only entitled to minimal protection. Accordingly, opposer's mark warrants the full scope of protection afforded it under Section 2(d).

Turning to the services offered by the parties, opposer argues that these services are closely related, if not identical, and are rendered in the same channels of trade and promoted to the same prospective customers. Applicant, on the other hand, contends that there is no overlap of services, in that opposer has admitted that it does not use

its mark in connection with taxi services.⁶ Applicant further contends that opposer primarily serves travelers renting cars in connection with airport travel, not the general public served by applicant.

In the first place, both opposer's registrations and applicant's application cover limousine services. Although applicant argues that there is nothing in the record to support opposer's actual provision of limousine services, this is not the case. Mr. Tucci testified to the provision of AMERICAR limousine services (TD 7:9), and opposer's response to applicant's Interrogatory No. 3 (see footnote 5) specifically refers to limousine services.⁷

Even more significantly, it is well settled that the respective services need not be identical, or even competitive, to support a finding of likelihood of confusion; it is sufficient if the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would

⁶ In response to applicant's interrogatory No. 3, asking whether opposer had ever engaged in the business of providing taxi cab services, opposer stated "No, only taxi cab like, airport valet and limousine services."

⁷ Applicant's offer in its brief to delete such services from its identification of services has been given no consideration. Only if applicant had filed a motion to amend prior to the trial period so as to give opposer fair notice of this proposed amendment would the Board consider the amendment under the provisions of Section 18 of the Trademark Act. See TBMP § 514.03. Even if properly before the Board, however, an amendment of this nature would not change the outcome of the case.

give rise, because of the marks used in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same source. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Although applicant argues that opposer's transportation services are not taxi cab services, resolution of this issue is clearly not dispositive of whether or not a relationship exists between the services of the parties. Opposer's valet airport parking services include shuttle service to and from the airport. Opposer's car rental services include shuttle service to the airport, hotel or the like. These services, which have been described as "taxi-cab like," would very likely be encountered by the same persons who would at some point avail themselves of applicant's taxi cab services, whether at an airport or elsewhere. Applicant's attempt to distinguish between opposer's customers as being travelers renting cars at airports and applicant's being the general public has no basis in reason. It would be difficult to find a member of the general public who has not at some time been a traveler using an airport, and if not using car rental services, at least being familiar with these rental services, as well as valet airport parking services. Looking at the matter from the other viewpoint, there is no

reason to believe that applicant's taxi cab services would not be encountered at airports by the same travelers accustomed to using car rental services and valet parking services. Thus, we find the services of the parties to be closely related and to be offered to the same customers, namely, the public in general.

In addition, we agree with opposer that these are services which are often hurriedly procured by travelers without close consideration to the marks under which they are being offered. The costs are not so great as to result in extended deliberation over engagement of a particular car rental service, limousine service or taxi cab service. The similarities of the services involved, the similarity of the customers to which they are offered and the spontaneity with which the services are engaged all weigh in opposer's favor.

Accordingly, we find that there would be a likelihood of confusion if the closely related transportation services of the parties were offered to the public under the similar marks AMERICAR and AMERICAB.

Decision: The opposition is sustained and registration is refused to applicant.

R. F. Cissel

H. R. Wendel

Opposition No. 106,979

L. K. McLeod

Trademark Administrative Judges,
Trademark Trial and Appeal Board